

VZCZCXYZ0021
PP RUEHWEB

DE RUEHPE #3074/01 2552153
ZNR UUUUU ZZH
P 122153Z SEP 07
FM AMEMBASSY LIMA
TO RUEHC/SECSTATE WASHDC PRIORITY 6812
INFO RUEHAC/AMEMBASSY ASUNCION PRIORITY 1801
RUEHBO/AMEMBASSY BOGOTA PRIORITY 5065
RUEHBR/AMEMBASSY BRASILIA PRIORITY 7580
RUEHBU/AMEMBASSY BUENOS AIRES PRIORITY 3093
RUEHCV/AMEMBASSY CARACAS PRIORITY 0759
RUEHLP/AMEMBASSY LA PAZ SEP 4514
RUEHMN/AMEMBASSY MONTEVIDEO PRIORITY 9305
RUEHQT/AMEMBASSY QUITO PRIORITY 1449
RUEHSG/AMEMBASSY SANTIAGO PRIORITY 1474

UNCLAS LIMA 003074

SIPDIS

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E.O. 12958: N/A
TAGS: [PHUM](#) [PGOV](#) [PREL](#) [EAID](#) [PE](#)
SUBJECT: CONSTITUTIONAL TRIBUNAL RULES PARTS OF NGO LAW
UNCONSTITUTIONAL

REF: A. LIMA 244

[1](#)B. LIMA 913

Sensitive But Unclassified. Please handle accordingly.

[1](#)1. (SBU) Summary: Peru's Constitutional Tribunal ruled on September 6 that parts of the NGO law were unconstitutional, specifically, articles one and nine, which had established tighter controls over private funding of NGOs and had established stiff penalties for NGOs violating the regulations. The decision came after a week of public statements by congressional leaders declaring the law both constitutional and necessary; NGOs have kept a low profile in the debate but are privately pleased the court struck down parts of the bill they saw as clearly unconstitutional. Still, the controversy and tensions between elements of the ruling party and the NGO community remain, and both sides expect that public skirmishing over the role of civil society in the political process will continue. End Summary.

[1](#)2. (SBU) On September 6, Peru's Constitutional Tribunal issued a 55-page ruling declaring parts of Law 28925 unconstitutional. The law was passed in December 2006 and was designed to increase governmental oversight over NGOs. In particular, the court took issue with language in Article 1 which allowed the government to regulate NGOs financed entirely by private funds. The court agreed with the appeal filed by a consortium of NGOs that such supervision represented an unconstitutional infringement on private contracts. The court also rejected administrative sanctions established in Article 9 which gave the government the right to dissolve NGOs and to ban NGO personnel from future involvement in international assistance. Although the bulk of the law remained unchanged, NGOs considered these two points the most important parts of the law (see reftels).

[1](#)3. (SBU) Some congressional leaders had used the run-up to the decision to defend the law. The president of the congress, Luis Gonzales Posada of the ruling APRA party, said the language of the law was clear and reflected a legitimate need to regulate NGO activity. The secretary general of APRA, Mauricio Mulder, said regulation of social organizations was a basic obligation of the state and suggested that some NGOs had allowed themselves to be used as terrorist fronts in the past. After the September 6 decision, both Mulder and Gonzales said the high court had not challenged the right of the government to regulate NGOs and had left the bulk of the law untouched. Both suggested that the congress would pass

additional legislation to meet the objections of the Constitutional Tribunal.

¶4. (SBU) Leading NGOs offered little public reaction but privately expressed satisfaction at a decision most considered inevitable. Hans Landolt of the NGO Institute for Legal Defense told poloff that Articles 1 and 9 were simply too vague and confusing to be implemented. Landolt called the entire debate over the law pointless: significant regulations already existed, he said, to control NGO activity, and NGOs have never questioned the right of the government to know how public funds are spent, only the state's right to intervene in a agreement signed between private parties. For Landolt, the Congress's insistence on legislating against NGOs in the absence of a compelling need suggests the congressional leadership does not understand the positive role NGOs can play in promoting social development.

¶5. (SBU) Pablo Rojas, secretary general of the National Committee on Human Rights -- an NGO umbrella organization -- told Poloff the controversy over the law reflects deep skepticism among the APRA leadership about the role of NGOs in a representative democracy. According to Rojas, the suspicion dates to the fall of ex-president Fujimori, when the APRA party saw firsthand the power of Peruvian NGOs to effect political change. Rojas says leaders like Mulder and Gonzales question the legitimacy of social organizations that are neither democratically elected nor accountable to a political constituency.

¶6. (SBU) Comment: Ombudsmen Beatriz Moreno told the Ambassador September 5 that the most striking feature of the NGO debate is the unwillingness of both sides to talk. Moreno said the law was passed with little public debate, and NGOs immediately went to court to challenge its

constitutionality rather than meet with Congressional leaders to resolve differences. The lingering animosity between the two sides resurfaced after the August 15 earthquake in Peru, when some NGOs charged the central government with purposely hindering private relief efforts, a charge the administration flatly denied. Peru's sustained economic growth is giving the central government unprecedented resources to address widespread poverty and inevitably is changing the relationship between the GOP and the NGO community. Neither side has handled the evolving relationship well, and in the words of Rojas, "If a major disaster cannot bring us together, nothing else will." End Comment
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